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FROM: Joseph T. Van Leeuwen
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Docket No. RSW920010012US1

Serial No. 09/845,537

Atty: GRW / JVL

Applicant: Molander

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IBM DOCKET NO. RSW920010012US1

DATE: December 21, 2005

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Application Serial No.: 09/845,537

DEC 21 2005

Sir:

Assignee Name: International Business Machines Corporation

Assignee Residence: Armonk, New York

Transmitted herewith for filing is the Patent Application of:

Inventors: Molander

For: **System and Method for Multifunction Menu Objects**


Enclosed are:

☒ Supplemental Reply Brief

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Respectfully submitted,

By 
Joseph T. Van Leeuwen
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Atty Ref. No. IBM-R105

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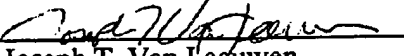
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Atty Ref. No. IBM-R105

DEC 21 2005

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:
Molander

Serial No.: 09/845,537

Filed: April 30, 2001

Title: System and Method for
Multifunction Menu Objects

§ Group Art Unit: 2174

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§ Examiner: Pesin, Boris

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§ Attorney Docket No. RSW920010012US1

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§ IBM Corporation

§ Software Group IP Law -- T81/503

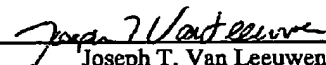
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DateAPPELLANT'S SUPPLEMENTAL REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

A. INTRODUCTORY COMMENTS

This supplemental reply brief is in response to the Examiner's Supplemental Answer mailed October 21, 2005. No fees are believed to be necessary at this time. In the event any fee is owed, however, please charge such fee or credit any overpayment to IBM Corporation Deposit Account No. 09-0461.

No extension of time is believed to be necessary. If, however, an extension of time is required, the extension is requested, and the undersigned hereby authorizes the Commissioner to charge any fees for this extension to IBM Corporation Deposit Account No. 09-0461.

Docket No. RSW920010012US1

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Molander - 09/845,537

Atty Ref. No. IBM-R105

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B. REPLY TO EXAMINER'S SUPPLEMENTAL ANSWER**No Publication Date on the Google Reference**

In the Examiner's Supplemental Answer, the Examiner incorrectly contends that a publication date for the Google reference has been established. Appellant notes that the Examiner does not point to any section of the MPEP in support of the Examiner's contentions. First, the Examiner points to the 892 form sent on October 6, 2004 indicating that the Google publication date was from 02/02/2001. However, this is not a valid "publication date" as this is simply a date supplied by the Examiner, not a publication date listed on the Google document.

Second, the Examiner points to "page 7" of the reference. However, "page 7" is not even part of the Google reference. Instead, "page 7" is a handwritten page number, presumably handwritten by the Examiner, from a separate archive website (the WayBackMachine) from which the Examiner contends the Google document was retrieved. Appellant notes that the only "publication date" on this document is a copyright date of 2001 shown on "page 8" (presumably the copyright date of the WayBackMachine software and not the copyright of the Google reference or the listing printed by the Examiner). Nonetheless, as no month is provided in the copyright date, the earliest publication date that can be used for this document is December 31, 2001 (some eight months after Appellant filed his application).

Finally, the Examiner contends that the Uniform Resource Locator (URL) that appears on the document can somehow be used as a publication date. The MPEP makes no provision whatsoever in relying on a web page address as a date. Moreover, the URL does indicate that the address is a "publication date." The entire URL is as follows:

<http://web.archive.org/web/20010202030300/http://toolbar.google.com>

Out of this long URL that was generated by a third party (and not by Google), the Examiner would like to use a part of the address as a "publication date." There is no indication in the address itself or elsewhere in the document that this part of the address can be used as a publication date. Furthermore, by relying on such information to derive a date, the Examiner is well outside the bounds of acceptable practice promulgated in the MPEP and applicable Rules (37 CFR) and statutes. Therefore, Appellant must object to this practice as the Google reference amounts to no more than hearsay. In other words, the Examiner is requiring that the Appellant


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trust the safeguards, procedures, and technology used by a third party archive machine for the truthfulness and veracity of the statement being made by the Examiner – namely the “publication” date of the Google reference. Interestingly, the document generated by the WayBackMachine itself does not state anywhere that there is any particular “publication date” for the Google reference. In the Examiner’s Supplemental Answer, the Examiner includes a statement from the “WayBackMachine” website, seemingly used to try and add credibility to the particular website used by the Examiner. However, as discussed in Appellant’s Reply Brief, there is no provision whatsoever in the MPEP that allows third party servers to prove a particular publication date, nor does the MPEP list any particular websites that are particularly trustworthy or that can be used to provide a publication date when a publication date is not found on a particular reference. Instead, the MPEP requires that a publication date must be included in the publication in order for it to be used as a prior art reference.

MPEP § 2128, subsection entitled “Electronic Publications as Prior Art,” is obviously cognizant of the pitfalls and shortcomings of many documents that can be obtained via the Internet. This section unequivocally states that “if the publication does not include a publication date (or retrieval date), it cannot be relied upon as prior art under 35 U.S.C. 102(a) or (b).” Furthermore, while various types of archive servers have existed on the Internet for many years, the MPEP simply does not provide that a publication date can be derived based upon particular digits of a URL, as the Examiner wishes to do with the Google reference.

As outlined above, Applicant has reviewed the Google reference in light of the requirements set forth in the MPEP and asserts that because there is no publication date on the Google reference it cannot be used as a prior art reference to reject Appellant’s claimed invention. Consequently, Appellant respectfully requests that the Board REVERSE the rejection of Appellant’s claims as being anticipated by the Google reference.

Respectfully submitted,

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